

Hon. Marsha J. Pechman

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

MARK HOFFMAN, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

HEARING HELP EXPRESS, INC.,
TRIANGULAR MEDIA CORP.,
LEADCREATIONS.COM, LLC and
LEWIS LURIE,

Defendants.

CASE NO. 3:19-cv-05960-MJP

**DECLARATION OF NICOLE
METRAL IN SUPPORT OF
DEFENDANT HEARING HELP
EXPRESS, INC.'S MOTION TO
STAY PENDING U.S. SUPREME
COURT *FACEBOOK V. DUGUID*
RULING ON DEFINITION OF AN
AUTOMATIC TELEPHONE
DIALING SYSTEM**

I, Nicole Metral, declare as follows:

1. I am an attorney at law duly licensed to practice before all the courts of the State of California and have been admitted *pro hac vice* to practice before this Court in this case. I am an associate attorney in the law firm of Blank Rome LLP ("Blank Rome"), attorneys for Defendant Hearing Help Express, Inc. ("HHE") in the above-entitled action. I have personal knowledge of the facts set forth in this declaration, and if called upon to testify as a witness, I could and would competently testify to the following facts. I submit this declaration in support of HHE's *Motion to Stay Pending U.S. Supreme Court Facebook v. Duguid Ruling on Definition of an Automatic Telephone Dialing System* ("Motion to Stay").

2. After HHE learned of Plaintiff Mark Hoffman's ("Plaintiff") claims in the above action, it did not make any further calls to Plaintiff. In fact, when Plaintiff told HHE over the

1 phone in or around September 2019 (which was more than a month prior to the filing of the
2 *Complaint*) that he was not looking to improve his hearing loss, HHE ceased all calls to him.

3 3. After HHE was served with the initial *Complaint*, HHE instituted an internal
4 litigation hold. After HHE was served, my office also sent a litigation hold letter to Defendant
5 Triangular Media Corp. (“Triangular”), who was not a party at the time, and who managed the
6 Interactive Voice Recognition technology used to collect Plaintiff’s consent to be called. Since
7 that time, my office also sent litigation hold letters to Skyscrapers (Pvt.) Limited (a third party)
8 and 10 other lead generation vendors from which HHE purchased leads during the relevant
9 period.

10 4. On January 8, 2021, Plaintiff’s counsel sent me an email requesting that HHE and
11 the other defendants stipulate to move the trial date to April of 2022. Attached hereto as **Exhibit**
12 **A** is a true and correct copy of that email. Later that day, fellow counsel to HHE Jeffrey N.
13 Rosenthal and I had a call with Plaintiff’s counsel—Anthony Paronich, Adrienne McEntee, and
14 Jennifer Murray. During this call, Mr. Rosenthal and I requested that Plaintiff agree to a
15 schedule whereby the case is stayed for five months pending the ruling in *Facebook v. Duguid*.
16 Plaintiff’s counsel refused this request.

17 5. On January 11, 2021, Plaintiff served my office with Interrogatories Set 2 on
18 HHE. One of the Interrogatories seeks information regarding the “licenses that were installed
19 on, or associated with, the Genesys . . . software that HHE used from March 2018 to the
20 present.” Attached hereto as **Exhibit B** is a true and correct copy of Plaintiff’s Interrogatories
21 Set 2.

22 6. To date the following discovery has been conducted.

- 23 • Plaintiff has served 25 total interrogatories and 79 requests for production on
- 24 HHE.

- HHE has produced 19,164 pages of documents, including a call log (that was also later supplemented to add additional columns of information pursuant to Requests for Production Set 2 served by Plaintiff).
- Plaintiff has deposed five current and former HHE employees and conducted a Rule 30(b)(6) corporate deposition of HHE; Plaintiff has also deposed Defendant Lewis Lurie.
- Plaintiff served a third-party subpoena on Triangular (before it was added as a party), IntriCon (which was recently added as a party), and a separate lead generator, ByteSuccess.
- In accordance with this Court's Order, [Dkt. No. 106], counsel for HHE and Plaintiff collaborated to create a methodology to transmit consent evidence from HHE's lead generator vendors. The parties agreed to a methodology on January 12, 2021.

7. On September 23, 2020, Plaintiff's counsel took the deposition of Justin Moser—a former HHE employee. Attached hereto as **Exhibit C** are true and correct copies of portions of Mr. Moser's transcript cited in the *Motion to Stay*.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 14, 2021, at Los Angeles, California.

By: /s/ Nicole Metral
Nicole Metral

CERTIFICATE OF SERVICE

I, Nicole Metral, hereby certify that on January 14, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following

TERRELL MARSHALL LAW GROUP

Benjamin Drachler
Beth E. Terrell
Jennifer Rust Murray
Adrienne D. McEntee
936 North 34th Street, Suite 300
Seattle, Washington 98103-8869
Phone: (206) 816-6603
bdrachler@terrellmarshall.com
BTerrell@terrellmarshall.com
JMurray@terrellmarshall.com
AMcentee@terrellmarshall.com

Attorneys for Plaintiff Mark Hoffman

PARONICH LAW, P.C.

Anthony I. Paronich
350 Lincoln Street, Suite 2400
Hingham, Massachusetts 22043
Phone: (617) 485-0018
Fax: (503) 318-8100
Anthony@paronichlaw.com

Attorney for Plaintiff, Mark Hoffman

Carl J. Marquardt
LAW OFFICE OF
CARL J. MARQUARDT, PLLC
1126 34th Avenue, Suite 311
Seattle, Washington 98122-5137
Telephone: (206) 388-4498
carl@cjmp LLC.com

*Attorney for Defendant Lewis Lurie and
Defendant LeadCreations.Com, LLC*

Edward Maldonado, Admitted Pro Hac Vice
MALDONADO LAW GROUP
2850 S. Douglas Road, Suite 303
Coral Gables, Florida 33134
Telephone: (305) 477-7580
eam@maldonado-group.com
awclerk@maldonado-group.com

*Attorney for Defendant Lewis Lurie and
Defendant LeadCreations.Com, LLC*

DECLARATION OF NICOLE METRAL IN SUPPORT
OF MOTION TO STAY - 4
No. 3:19-cv-05960-MJP

VAN KAMPEN & CROWE PLLC
1001 Fourth Avenue, Suite 4050
Seattle, Washington 98154-1000
(206) 386-7353

1 Signed at Los Angeles, California this 14th day of January 2021.

2
3 /s/ Nicole Metral

4 Ana Tagvoryan (admitted pro hac vice)

5 atagvoryan@BlankRome.com

6 Jeffrey Rosenthal (admitted pro hac vice)

7 Rosenthal-J@BlankRome.com

8 Nicole B. Metral (admitted pro hac vice)

9 nbmetral@blankrome.com

10 2029 Century Park East, 6th Floor

11 Los Angeles, CA 90067

12 Telephone: 424.239.3400

13 Facsimile: 424.239.3434

14
15 *Attorneys for Defendant Hearing Help Express, Inc.*

Exhibit A

From: Adrienne McEntee <amcentee@terrellmarshall.com>
Sent: Friday, January 8, 2021 11:09 AM
To: Metral, Nicole
Cc: Anthony Paronich; Ben Drachler; Jennifer Murray; Edward Maldonado; carl@cjmpllc.com; Tagvoryan, Ana; Rosenthal, Jeffrey; David Crowe
Subject: RE: [External] Hoffman v. Hearing Help Express, et al. - Stipulation to Extend Expert Deadlines

Nicole, in light of the Court's recent order, we propose the following schedule, which we'd like to submit today if all parties agree.

Event	Current Date	Proposed Date
JURY TRIAL DATE	November 1, 2021	April 18, 2022 (or judge's discretion)
Plaintiff's reports from expert witnesses under FRCP 26(a)(2) due EXCEPT for witnesses testifying on whether Hearing Help's Genesys system is an ATDS	January 15, 2021	January 15, 2021
Defendants' reports from expert witnesses under FRCP 26(a)(2) due EXCEPT for witnesses testifying on whether Hearing Help's Genesys system is an ATDS	January 15, 2021	February 5, 2021
Deadline to move for class certification	February 25, 2021	February 25, 2021
Plaintiff's rebuttal reports from rebuttal expert witnesses under FRCP 26(a)(2) due EXCEPT for witnesses testifying on whether Hearing Help's Genesys system is an ATDS	No current deadline	February 25, 2021
Defendants' reports from rebuttal expert witness under FRCP 26(a)(2) due EXCEPT for witnesses testifying on whether Hearing Help's Genesys system is an ATDS	No current deadline	March 15, 2021
Discovery completed by (except for expert discovery)	April 30, 2021	April 30, 2021
All motions related to discovery must be filed by and noted on the motion calendar on the third Friday thereafter (CR 7(d))	May 6, 2021	May 6, 2021

All reports from expert witnesses under FRCP 26(a)(2) due on the ATDS issue	No current deadline	August 6, 2021 (or 45 days following the decision in <i>Duguid v. Facebook</i> , whichever is earlier)
Rebuttal reports from any rebuttal expert witnesses under FRCP 26(a)(2) due on the ATDS issue	No current deadline	August 27, 2021 (or 3 weeks following initial disclosure of expert witnesses on ATDS issue)
Expert discovery cutoff	No current deadline	September 10, 2021 (or 2 weeks following service of rebuttal expert reports on ATDS issue)
All motions related to expert discovery must be filed and noted on the motion calendar on the third Friday thereafter for experts only (see CR 7(d))	No current deadline	September 7, 2021
Dispositive motion deadline (All dispositive motions must be filed by and noted on the motion calendar for the fourth Friday thereafter—see CR7(d)) Counsel are cognizant of the requirement to provide courtesy copies of any motions with exhibits or other attachments exceeding 50 pages.	May 27, 2021	October 28, 2021
All motions in limine must be filed by and noted on the motion calendar no earlier than the third Friday thereafter and no later than the Friday before the pretrial conference	September 27, 2021	February 17, 2022
Agreed pretrial order due	October 19, 2021	March 11, 2022
Trial briefs, proposed voir dire questions, and proposed jury instructions	October 19, 2021	March 11, 2022
Pretrial conference	October 21, 2021 at 1:30 PM	AT COURT'S DISCRETION
Length of Jury Trial	5-7 days	5-7 days

From: Metral, Nicole <NBMetral@BlankRome.com>

Sent: Wednesday, January 6, 2021 5:26 PM

To: Adrienne McEntee <amcentee@terrellmarshall.com>

Cc: Anthony Paronich <anthony@paronichlaw.com>; Ben Drachler <bdrachler@terrellmarshall.com>; Jennifer Murray <jmurray@terrellmarshall.com>; Edward Maldonado <eam@maldonado-group.com>; carl@cjmp LLC; Tagvoryan, Ana <ATagvoryan@BlankRome.com>; Rosenthal, Jeffrey <Rosenthal-J@BlankRome.com>; David Crowe <dcrowe@vkclaw.com>

Subject: RE: [External] Hoffman v. Hearing Help Express, et al. - Stipulation to Extend Expert Deadlines

Hi Adrienne,

Thank you for speaking with me today on the phone. Attached is the stipulation with the dates you and I discussed.

Adrienne and Ed – if this looks okay to you, please respond to this email so we can e-sign for you and file it tonight.

Thank you.

Nicole Bartz Metral | BLANKROME

2029 Century Park East | 6th Floor | Los Angeles, CA 90067

Office: 424.239.3483 | Cell: 310.902.3937 | Fax: 424.239.3845 | nbmetral@blankrome.com

From: Metral, Nicole

Sent: Wednesday, January 6, 2021 3:50 PM

To: 'Adrienne McEntee' <amcentee@terrellmarshall.com>

Cc: Anthony Paronich <anthony@paronichlaw.com>; Ben Drachler <bdrachler@terrellmarshall.com>; Jennifer Murray <jmurray@terrellmarshall.com>; Edward Maldonado <eam@maldonado-group.com>; carl@cjmpllc.com; Tagvoryan, Ana <ATagvoryan@BlankRome.com>; Rosenthal, Jeffrey <Rosenthal-J@BlankRome.com>; David Crowe <dcrowe@vkclaw.com>

Subject: RE: [External] Hoffman v. Hearing Help Express, et al. - Stipulation to Extend Expert Deadlines

Hi Adrienne,

I just tried calling you to see if we could discuss these deadlines quickly on the phone. I left a message for Anthony too. Can you please give me a call back at 310-902-3937?

Thank you.

Nicole Bartz Metral | BLANKROME

2029 Century Park East | 6th Floor | Los Angeles, CA 90067

Office: 424.239.3483 | Cell: 310.902.3937 | Fax: 424.239.3845 | nbmetral@blankrome.com

From: Adrienne McEntee <amcentee@terrellmarshall.com>

Sent: Wednesday, January 6, 2021 2:06 PM

To: Metral, Nicole <NBMetral@BlankRome.com>

Cc: Anthony Paronich <anthony@paronichlaw.com>; Ben Drachler <bdrachler@terrellmarshall.com>; Jennifer Murray <jmurray@terrellmarshall.com>; Edward Maldonado <eam@maldonado-group.com>; carl@cjmpllc.com; Tagvoryan, Ana <ATagvoryan@BlankRome.com>; Rosenthal, Jeffrey <Rosenthal-J@BlankRome.com>; David Crowe <dcrowe@vkclaw.com>

Subject: Re: [External] Hoffman v. Hearing Help Express, et al. - Stipulation to Extend Expert Deadlines

Nicole,

We're not opposed to your expert providing a report after ours, but we need sufficient time to depose them. And we need sufficient time for a rebuttal report. We also have minor tweaks to the later deadlines. Here is our proposal. Please let us know if these dates will work for you. If so, please circulate a stipulation for review.

Jan 15 – Existing deadline for P’s expert report

Jan 29 – Deadline for D’s expert report

Feb 25 – Existing deadline for class cert PLUS deadline for P’s rebuttal expert report

Mar 15 – Deadline for D’s rebuttal report

Aug 6 – Deadline for P’s ATDS expert report, but 45 days from Duguid, not 30

Aug 27 – Deadline for D’s ATDS expert report, but 65 days from Duguid

(We nix the Sept deadline)

Adrienne

On Jan 6, 2021, at 12:32 PM, Metral, Nicole <NBMetral@blankrome.com> wrote:

Hi All,

We have reviewed the Motion Plaintiff filed requesting the deadline for experts on the ATDS issue to be extended. While we do not formally oppose this request, we would like to propose a revised timeline that adds a couple of other dates and changes the language of your requested timeline. The timeline we are proposing to you is below and has the new dates and modified language in red text for ease of reference.

Can you please let us know by 3:30 p.m. Pacific Time today if you will agree to this schedule so that we can file a stipulation with the Court? If there is no agreement or we do not hear from you, we will file a Response to the Motion requesting these dates be added.

EVENT	DATE
JURY TRIAL DATE	November 1, 2021
Plaintiff’s reports from expert witness under FRCP 26(a)(2) due EXCEPT for witnesses testifying on whether Hearing Help’s Genesys system is an ATDS	January 15, 2021
Deadline to move for class certification	February 25, 2021
Deadline for Defendants to disclose expert witnesses and submit expert reports, except for witnesses testifying on whether Hearing Help’s Genesys system is an ATDS	March 15, 2021
All motions related to discovery must be filed by and noted on the motion calendar on the third Friday thereafter (see CR7(d))	May 6, 2021

EVENT	DATE
Discovery completed by (except for expert discovery)	April 30, 2021
All dispositive motions must be filed by and noted on the motion calendar on the fourth Friday thereafter (see CR7(d)) Counsel are cognizant of the requirement to provide courtesy copies of any motions with exhibits or other attachments exceeding 50 pages.	May 27, 2021
Plaintiff's reports from expert witnesses under FRCP 26(a)(2) due on the ATDS issue	August 6, 2021, or 30 days following the decision in <i>Duguid v. Facebook</i> , whichever is earlier
Deadline for Defendants to disclose expert witnesses on ATDS issue	August 27, 2021, or 50 days following decision in <i>Duguid v. Facebook</i>
Deadline for Defendants to submit expert reports on ATDS issue	September 16, 2021, or 70 days following decision in <i>Duguid v. Facebook</i>
All motions in limine must be filed by and noted on the motion calendar no earlier than the third Friday thereafter and no later than the Friday before the pretrial conference	September 27, 2021
Agreed pretrial order due	October 19, 2021
Trial briefs, proposed voir dire questions, and proposed jury instructions	October 19, 2021
Pretrial conference	October 21, 2021 at 01:30 PM
Length of Jury Trial	5 – 7 days

Nicole Bartz Metral | BLANKROME

2029 Century Park East | 6th Floor | Los Angeles, CA 90067

Office: 424.239.3483 | Cell: 310.902.3937 | Fax: 424.239.3845 | nbmetral@blankrome.com

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Exhibit B

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

MARK HOFFMAN, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

HEARING HELP EXPRESS, INC.,

Defendant.

NO. 3:19-cv-05960-MJP

**PLAINTIFF'S SECOND SET OF
INTERROGATORIES TO
DEFENDANT HEARING HELP
EXPRESS**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, the following interrogatories are propounded to Defendant Hearing Help Express, Inc. and its attorneys of record. These interrogatories are intended to draw upon the combined knowledge of you, your agents, and your attorneys.

I. INSTRUCTIONS

Pursuant to Federal Rule of Civil Procedure 33, submit your answers to these interrogatories in writing and under oath to the undersigned counsel within thirty (30) days after the date of service upon you. If any of these interrogatories cannot be answered in full, then you should answer to the fullest extent possible, specifying the reasons for your inability to answer the remainder, and stating whatever information or knowledge you have concerning the unanswered portion or portions. In answering these interrogatories, furnish such information as is available to you, regardless of whether this information is obtained directly by you, through your agents or representatives, or by any of your attorneys.

1 These interrogatories are continuing in nature. In accordance with Federal Rule of Civil
 2 Procedure 26, you are required to supplement your answers to these interrogatories in the event
 3 new or additional information becomes known to you.

4 II. DEFINITIONS

5 1. “And” or “or” shall be construed conjunctively or disjunctively as necessary to
 6 make the requests inclusive rather than exclusive. The use of the word “including” shall be
 7 construed to mean “without limitation.”

8 2. “Identify” or “describe” means the following:

9 a. When used in connection with natural persons, “identify” or “describe”
 10 means to state the person’s full name, present business address and telephone number, present
 11 home address, and city of residence as well as the substance of the person’s knowledge, where
 12 such knowledge was obtained, whether such knowledge was discussed with you, when such
 13 discussions occurred, who participated in such discussions, and the substance of all discussions.

14 b. When used in connection with an entity, “identify” or “describe” means to
 15 state the entity’s full name, last known address(es), telephone number, and organization form
 16 (e.g., corporation, sole proprietorship, partnership, joint venture, etc.).

17 c. When used in connection with an act, “identify” or “describe” means to
 18 provide a description of the act, including the place, date, and time of its occurrence, and the
 19 persons and/or entities engaged in the act.

20 d. When used in connection with documents, “identify” or “describe” means
 21 to state the nature of the Document (e.g., memorandum, letter, notes, etc.), its author(s), its
 22 addressee(s) or recipient(s), its title or subject matter, and a date. If the Document has already
 23 been produced, it can be identified by the number given to it at the time of production. If the
 24 Document has not been previously produced, then Plaintiff request that it be produced, pursuant
 25 to Fed. R. Civ. P. 34, along with Defendant’s response to these Interrogatories.

26 3. When used in connection with an oral communication, “identify” or “describe”
 27 means to state the time, date, place, and means of the oral communication (e.g., telephone,

personal meeting, etc.), the identity of all persons participating in the oral communication, the identity of persons hearing the oral communication, and a detailed description of the oral communication.

4. “Person” means any natural or artificial person, including business entities and other legal entities.

5. “Relate” or “relating” shall mean directly or indirectly supporting, evidencing, describing, mentioning, referring to, contradicting, comprising or concerning.

6. “You,” “Your,” “Defendant,” or “Hearing Help” means Hearing Help Express, Inc., all of its past and present directors, officers, employees, agents, contractors, consultants, attorneys and other Persons working on its behalf, directly or indirectly, and all of its divisions, departments, headquarters, offices, parent companies, subsidiaries, predecessors, assignors, or contractual affiliates.

III. INTERROGATORIES

INTERROGATORY NO. 24 List the licenses that were installed on, or associated with, the Genesys Pure Cloud software that YOU used from March 2018 to the present.

ANSWER:

INTERROGATORY NO. 25 Relating to the list below of 83 campaign names YOU produced in document Bates-labeled HHE0019164.1, identify each campaign as one of the following categories described by Mr. Calligan at his deposition (see excerpts from Calligan Deposition Transcript, attached as Ex. A to these Interrogatories): (a) sales calls to leads, (b) customer service calls, or (c) calls to persons in Hearing Help’s customer database.

1. 0-2019-06-28_Kept-Aid-Prequalified_Cleaned-v2
2. 0-2019-Appt-Flup-02
3. 0-2019-KISS
4. 0-BAT-Card_2018-19

- 1 5. 0-BAT-Preq_2018
- 2 6. 0-BAT-Preq_2019
- 3 7. 0-PAPPA_Phase1
- 4 8. 2019-01-30_Kept-Aid-Prequalified
- 5 9. 5285e3c6-12f6-4b6b-b21f-486cf6bc1819
- 6 10. 5477ebb8-7f7d-44c2-b3f5-fdf628505edf
- 7 11. 6f8c2b48-86ce-46a6-b669-23f7c74a2e14
- 8 12. 9fba2332-d566-4014-92ae-f15916eb560e
- 9 13. Catalogs pre 7/23
- 10 14. FRESHSALES SCREEN POP TEMPLATE
- 11 15. FS-Claritas-ABC_E
- 12 16. FS-Claritas-D
- 13 17. FS-Master-Attempts=00
- 14 18. FS-Master-Attempts=01
- 15 19. FS-Master-Attempts=02
- 16 20. FS-Master-Attempts=03
- 17 21. FS-Master-Attempts=04-07
- 18 22. FS-Master-Attempts=08-10
- 19 23. FS-Master-Attempts=10+
- 20 24. FS-Master-B-Attempts=00-06
- 21 25. FS-Master-B-Attempts=07+
- 22 26. FS-Master-C-01-Attempts=ALL -
- 23 27. FS-Master-C-Attempts=ALL
- 24 28. Facebook WED
- 25 29. Fluent- pre 7/24
- 26 30. Freshsales-THU
- 27 31. Giantlist pre 7/23

32. INQR_104018
33. INQR_104089
34. INQR_104331
35. LeadCreation 7/23 and before
36. LeadCreations -TUE
37. Little 7/1-7/23
38. LittleBrook TUES
39. OUTBOUND TRAINING CAMPAIGN
40. RAID_103956 (Jan-01 thru Feb-14) 2018
41. RAID_103998 (Nov-01 thru Dec-21) 2017
42. RAID_104019 (Feb-14 thru Mar-29) 2018
43. RAID_104090 (Mar-29 thru May-22) 2018
44. TV Response 8/14/18
45. TV Response Master list
46. TV Response pre 7/24
47. Training Campaign
48. Webimax-THU
49. Webimax-pre 7/24
50. Z REMOVE LeadCreations -7/16
51. Z REMOVE Face 7/23 and before
52. Z REMOVE FaceBook Tues
53. Z REMOVE LC 7/16-7/22
54. Z REMOVE LC 7/2-7/8
55. Z REMOVE LC 7/9-7/22
56. Z REMOVE LeadCreations -7/11 am
57. Z REMOVE LeadCreations -7/12 am
58. Z REMOVE LeadCreations -7/13

59. Z REMOVE LeadCreations -7/17
60. Z REMOVE LeadCreations -7/18
61. Z REMOVE LeadCreations -FRI
62. Z REMOVE LeadCreations -THU
63. Z REMOVE LeadCreations 7/10 am
64. Z REMOVE LeadCreations-NA/LVM/QuNI
65. Z REMOVE TV Response - 7/13a
66. Z REMOVE TV Response - 7/13b
67. Z REMOVE TV Response -7/16
68. Z REMOVE TV Response FRI
69. Z REMOVE TV Response Thu
70. Z REMOVE TV Response Tues
71. Z REMOVE TV Response Wed
72. Z REMOVE TV Response - 7/11
73. Z REMOVE TV Response - 7/12
74. Z REMOVE TV Response 7/10
75. Z REMOVE TV Response 7/18
76. Z REMOVE Web/Giant/Face - 7/11-7/15
77. Z REMOVE Web/Giant/Face 7/10 and before
78. Z REMOVE Web/Giant/Face- called before 7/18
79. b42eecd9-2537-4e80-8756-39b80a9b7635
80. old-do-not-use-0-FS-Claritas-A
81. old-do-not-use-0-FS-Claritas-B
82. old-do-not-use-0-FS-Claritas-C
83. old-do-not-use-0-FS-Claritas-E

1 ANSWER:

2
3
4 INTERROGATORIES PROPOUNDED AND DATED this 11th day of January, 2021.

5 TERRELL MARSHALL LAW GROUP PLLC

6
7 By: /s/ Jennifer Rust Murray, WSBA#36983

8 Beth E. Terrell, WSBA #26759

9 Email: bterrell@terrellmarshall.com

10 Jennifer Rust Murray, WSBA #36983

11 Email: jmurray@terrellmarshall.com

12 Adrienne D. McEntee, WSBA #34061

13 Email: amcentee@terrellmarshall.com

14 936 North 34th Street, Suite 300

15 Seattle, Washington 98103-8869

16 Telephone: (206) 816-6603

17 Anthony I. Paronich, *Admitted Pro Hac Vice*

18 Email: anthony@paronichlaw.com

19 PARONICH LAW, P.C.

20 350 Lincoln Street, Suite 2400

21 Hingham, Massachusetts 02043

22 Telephone: (617) 485-0018

23 Facsimile: (508) 318-8100

24 *Attorneys for Plaintiff and the Proposed Class*

CERTIFICATION OF ATTORNEY

I am the attorney for Defendant in this matter. I declare under penalty of perjury under the laws of the United States of America that I have read the within and foregoing Plaintiff's First Set of Interrogatories Propounded to Plaintiff and Answers Thereto, know the contents thereof, believe the same to be true and correct, and that the same are in compliance with Fed. R. Civ. P. 26(g).

DATED this ____ day of _____, 2021.

By: _____

VERIFICATION

STATE OF _____)
) ss.
COUNTY OF _____)

I, _____, having been first duly sworn on oath, depose and say:

I am the _____ of Defendant Hearing Help Express, Inc.. I declare
under penalty of perjury under the laws of the United States of America that I have read the
within and foregoing Answers to Interrogatories to Plaintiff, know the contents thereof, and
believe the same to be true and correct.

By: _____

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2021.

(Printed Name)_____

NOTARY PUBLIC in and for the State of

_____ residing at _____

My Commission Expires: _____

CERTIFICATE OF SERVICE

I, Jennifer Rust Murray, hereby certify that on January 11, 2021, I caused true and correct copies of the foregoing to be served via electronic mail upon the following:

David E. Crowe, WSBA #43529
Email: dcrowe@vkclaw.com
VAN KAMPEN & CROWE PLLC
1001 Fourth Avenue, Suite 4050
Seattle, Washington 98154
Telephone: (206) 386-7353
Facsimile: (206) 405-2825

Ana Tagvoryan, *Admitted Pro Hac Vice*
Email: atagvoryan@blankrome.com
Nicole Bartz Metral, *Admitted Pro Hac Vice*
Email: nbmetral@blankrome.com
BLANK ROME LLP
2029 Century Park East, 6th Floor
Los Angeles, California 90067
Telephone: (424) 239-3400
Facsimile: (424) 239-3434

Jeffrey Rosenthal, *Admitted Pro Hac Vice*
Email: rosenthal-j@blankrome.com
BLANK ROME LLP
130 North 18th Street
Philadelphia, Pennsylvania 19103
Telephone: (215) 569-5500
Facsimile: (215) 569-5555

Attorneys for Defendant

1 DATED this 11th day of January, 2021.

2 TERRELL MARSHALL LAW GROUP PLLC

3 By: /s/ Jennifer Rust Murray, WSBA #36983

4 Jennifer Rust Murray, WSBA #36983

5 Email: jmurray@terrellmarshall.com

6 936 North 34th Street, Suite 300

7 Seattle, Washington 98103

8 Telephone: (206) 816-6603

9 Facsimile: (206) 319-5450

10 *Attorneys for Plaintiff and the Proposed Class*

EXHIBIT A

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

MARK HOFFMAN, on behalf of)	
himself and all others)	
similarly situated,)	
)	
Plaintiff,)	
)	
vs.)	No. 3:19-cv-05960-RBL
)	
HEARING HELP EXPRESS, INC.,)	
TRIANGULAR MEDIA CORP., and)	
LEWIS LAURIE,)	
)	
Defendants.)	

ZOOM 30(B)(6) DEPOSITION UPON ORAL EXAMINATION OF
HEARING HELP EXPRESS, INC.

RICH CALLAGAN

July 30, 2020

4:01 p.m.

Seattle, Washington

Reported by:

JOHANNA CHAPIN BRUNT
CCR No. 2159
Job No. 930964 (2)

1 MS. MCENTEE: Okay. Let me just ask a couple of
2 follow-up questions on the campaign issue and then we can
3 do that.

4 MR. ROSENTHAL: Sure. Sure.

5 Q. (By Ms. McEntee) So I think you said, and tell me
6 if I'm wrong, but I think that you said that you can tell
7 the type of number that was called or the type of lead that
8 was called based on the name of the campaign. Did I get
9 that right?

10 MR. ROSENTHAL: Objection. Misstates the
11 testimony.

12 A. Yeah, the -- I understand what you're trying to
13 say, but that is -- I don't -- it would not say what type
14 of lead it is. I'm not sure what you mean.

15 Q. (By Ms. McEntee) So what did you say earlier
16 about the name of the campaign and what sort of information
17 it would tell you about the call?

18 A. It would tell me if it was a sales call to a lead
19 or a customer service call or a call to somebody in our
20 customer database.

21 Q. Okay. And so what are you looking for in the
22 campaign names that would tell you that it was a sales
23 call?

24 A. It's more of the opposite. What I would look for
25 in the campaign name to indicate that it was not a sales

1 call to a lead by Triangular would be RAID, R-A-I-D,
2 I-N-Q-R, B-A-T-O. There may be more but off the top of my
3 head those would indicate to me that those were in our
4 dBASE system.

5 Q. Okay. And because RAID means what to you?

6 A. Return aid.

7 Q. Okay. So that's somebody who's calling in and has
8 a question about the product perhaps, and so they're
9 getting a return call?

10 A. No, that's somebody who has returned their hearing
11 aid.

12 Q. Got it. And so if you saw that code in the
13 campaign column, would that indicate to you that that was a
14 manual call?

15 A. No.

16 Q. What would it indicate to you?

17 A. That it was a preloaded list and it was a customer
18 who returned a hearing aid.

19 Q. Okay. And so that code, RAID, does that indicate
20 that that list was called by the dialer?

21 A. By dialer, you're referring to the preloaded list
22 of contacts, correct, because there's different dialing
23 methods? If there is something -- go ahead.

24 Q. So when I use the term "dialer," I just mean
25 PureCloud.

1 MR. ROSENTHAL: Let me just jump in here. If
2 you're not clear with the term that Adrienne is using, just
3 ask her what she means by it instead of saying, you know,
4 if you assume XYZ. I think it will make it easier for all
5 of us.

6 THE WITNESS: Okay.

7 MS. MCENTEE: Yeah, and maybe let's take a break
8 now. So just, you know, let me know how much time you
9 need.

10 MR. ROSENTHAL: Johanna, do you want to do 10
11 minutes?

12 COURT REPORTER: Yes, that's fine.

13 MR. ROSENTHAL: Okay. So I have 8:01 my time. We
14 will come back at 8:11.

15 (Short break taken.)

16 BY MS. MCENTEE:

17 Q. So before the break, you were describing naming
18 conventions that show up in a campaign column of a call
19 log; is that right?

20 A. Yes.

21 Q. Okay. And really what I'm interested in knowing
22 is how is a campaign that a sales rep is assigned to named
23 in that campaign column?

24 A. I don't know. There's no -- I wasn't in charge of
25 naming the campaigns particularly. I mean, there are

1 various campaign names.

2 Q. Okay. But here's the deal, you're not here just
3 as you today, so you were designated on behalf of the
4 company to provide testimony on the dialer and the reports
5 that are created by the dialer. So I do need you to give
6 me as much as you can about how campaigns were named, that
7 were -- right, that were associated with outbound sales
8 calls.

9 A. Right. So, again, any campaign name that you see
10 that is not one of the more specific names like RAID, BATO,
11 INQR, you can assume that they were the outbound sales
12 campaigns.

13 Q. And these three specific names that you listed,
14 are they written down somewhere in a list that can be
15 produced?

16 A. Possibly. I mean, I guess, I don't know -- I'm
17 sorry, I don't know if there's a specific list that defines
18 each campaign name.

19 Q. I'm not asking for that. I mean, you said that
20 you can assume that the campaign names are associated with
21 campaigns that were called by outbound sales reps unless
22 they fall under some specific naming conventions, correct?

23 A. Yes.

24 Q. You've given us three, and I'm trying to
25 understand if there are more. And if there are more, is

1 there a list somewhere that would tell us what they are?

2 A. I would have to look at the entire list and
3 specifically curate them out.

4 Q. Who is in charge of naming the campaigns?

5 A. I was in charge of naming some of them. The sales
6 manager was in charge of naming others.

7 Q. Anybody else?

8 A. Possibly a marketing manager.

9 Q. Were you responsible for naming any of the
10 campaigns that were used by outbound sales reps?

11 A. Yes.

12 Q. Okay. What are some examples of names you
13 assigned to campaigns that were used by outbound sales
14 reps?

15 A. Something that had the letters K-I-S-S in all
16 caps. Some had the word Claritas in them. Some that had
17 the names of the lead source.

18 Q. Anything else?

19 A. I don't recall any other ones.

20 Q. Okay. Any reason for using the word K-I-S-S as a
21 naming convention?

22 A. That was the one to keep it super simple.

23 Q. Keep what super simple?

24 A. The dialing frequency.

25 Q. And in a keep it super simple scenario, what was

C E R T I F I C A T E

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I, the undersigned Washington Certified Court Reporter, pursuant to RCW 5.28.010 authorized to administer oaths and affirmations in and for the State of Washington, do hereby certify:

That the annexed and foregoing deposition testimony of each witness named herein was taken stenographically to the best of my ability before me and reduced to a typed format under my direction;

I further certify that according to CR 30(e) the witness was given the opportunity to examine, read and sign the deposition after the same was transcribed, unless indicated in the record that the review was waived;

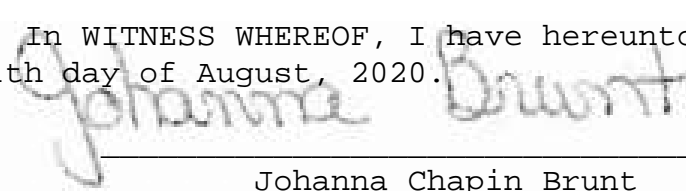
I further certify that I am not a relative or employee of any such attorney or counsel, and that I am not financially interested in the said action or the outcome thereof;

I further certify that the witness before examination was by me duly sworn to testify the truth, the whole truth and nothing but the truth;

I further certify that the deposition, as transcribed, is a full, true and correct transcript of the testimony, including questions and answers, and all objections, motions and exceptions of counsel made and taken at the time of the foregoing examination and was prepared pursuant to Washington Administrative Code 308-14-135, the transcript preparation format guideline;

I further certify that I am herewith securely sealing the said deposition and promptly delivering the same to the appropriate authority;

In WITNESS WHEREOF, I have hereunto set my hand on this 11th day of August, 2020.



Johanna Chapin Brunt
Certified Court Reporter No. 2159
in and for the State of Washington,
residing at Seattle, Washington.
My CCR certification expires 07/17/2021

Exhibit C

UNITED STATES DISTRICT COURT

MARK HOFFMAN, on behalf of)
himself and all others)
similarly situated,)
Plaintiff,)

)

HEARING HELP EXPRESS, INC.,)
 TRIANGULAR MEDIA CORP., and)
 LEWIS LURI,)
 Defendants.)

DEPOSITION OF JUSTIN MOSER

APPEARING REMOTELY FROM

DEKALB COUNTY, ILLINOIS

September 23, 2020

6:00 P.M. CDT

Reported by: Jennifer Campbell, CSR, RPR

License No.: 084-003282

APPEARING REMOTELY FROM KENDALL COUNTY, ILLINOIS

1 REMOTE APPEARANCES:

2 FOR MARK HOFFMAN:

3 TERRELL MARSHALL LAW GROUP PLLC
4 MS. ADRIENNE D. MCENTEE
5 936 North 34th Street
6 Suite 300
7 Seattle, Washington 98103
8 (206) 816-6603
9 amcentee@terrellmarshall.com

10 and

11 PARONICH LAW, PC
12 ANTHONY I. PARONICH
13 350 Lincoln Street
14 Suite 2400
15 Hingham, Massachusetts 02043
16 (617) 485-0018
17 anthony@paronichlaw.com

18 FOR JUSTIN MOSER, HEARING HELP EXPRESS:

19 BLANK ROME LLP
20 MR. JEFFREY ROSENTHAL
21 130 North 18th Street
22 Philidelphia, Pennsylvania 19103
23 (215) 569-5500
24 rosenthal-j@blankrome.com

and

BLANK ROME LLP
MS. NICOLE BARTZ METRAL
2029 Century Park East
6th Floor
Los Angeles, California 90067
(424) 239-3400
nbmetral@blankrome.com

* * *

I N D E X

WITNESS EXAMINATION

JUSTIN MOSER

EXAMINATION BY MR. PARONICH	6
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E X H I B I T S

NUMBER MARKED FOR ID

Exhibit 27 HHE0006428	50
Exhibit 28 HHE0006353	53
Exhibit 29 HHE0006206	56
Exhibit 30 HHE0011040	57
Exhibit 31 HHE0015114	58

(Exhibits Provided Electronically to the Reporter)

1 REPORTED REMOTELY FROM KENDALL COUNTY, ILLINOIS
2 WEDNESDAY, SEPTEMBER 23, 2020, 6:00 P.M. CDT
3

4 THE REPORTER: The attorneys participating in
5 this deposition acknowledge that I am not
6 physically present in the deposition room and that
7 I will be reporting this deposition remotely,
8 pursuant to Federal Rule of Civil Procedure 29.
9 They further acknowledge that, in lieu of an oath
10 administered in person, the witness will verbally
11 declare his testimony in this matter is under
12 penalty of perjury. The parties and their counsel
13 consent to this arrangement and waive any
14 objections to this manner of reporting. Please
15 indicate your agreement by stating your name and
16 your agreement on the record.

17 Will counsel please identify yourself,
18 your firm name, and who you represent, please
19 state: "So agreed and stipulated," beginning with
20 the plaintiff.

21 MR. PARONICH: And counsel for plaintiff. So
22 agreed and stipulated.

23 MR. ROSENTHAL: Jeff Rosenthal, go ahead.

24 MS. MC ENTÉE: Adrienne McEntee, counsel for

1 the plaintiff. So stipulated and agreed to.

2 MR. ROSENTHAL: Jeffrey N. Rosenthal, counsel
3 for the witness. So stipulated and agreed.

4 MS. METRAL: Nicole Metral, also counsel for
5 the witness from Blank Rome. So stipulated and so
6 agreed.

7 THE REPORTER: Thank you, kindly.

8 At this point will the witness kindly
9 present his government-issued identification by
10 holding it up to the camera for verification.

11 (Witness presents government-issued
12 identification and identity is verified.)

13 THE REPORTER: At this point, I can now ask you
14 to raise your right hand to be sworn.

15 Okay. You do solemnly swear or affirm
16 that the testimony you're about to give will be the
17 truth, the whole truth, and nothing but the truth.

18 THE WITNESS: I do.

19 MR. PARONICH: Thank you.

20 JUSTIN MOSER,
21 called as a witness herein, having been first duly
22 sworn, was examined and testified as follows:
23
24

1 A. I had the ability to turn on and off.
2 I had the ability to pick different lists to run.
3 I had the ability to change the speed. I had the
4 ability to change the scripts. I had the ability
5 on filters. I could make scripts. I could upload
6 lists. I could -- I mean, that's pretty much it.

7 Q. Okay. So I'm going to ask questions about
8 some of those things.

9 So to pick lists, does that mean that you
10 could select a list that was already uploaded for
11 the dialing system to contact?

12 A. Yes.

13 Q. What were the different speed options?

14 A. There were four different speed options.

15 Q. And do you recall what those four were?

16 A. There was a preview, a progressive,
17 another one that started with "P" -- actually,
18 I think the last two started with "P." The names
19 I can't -- I haven't been on it in -- we haven't
20 used a dialer in over a year so it's been like
21 15 months. I don't remember the names.

22 Q. Understood. Do you recall if they were
23 predictive or power?

24 A. Power was one.

1 I don't know if predictive was one.

2 Q. Okay.

3 A. Predictive wasn't the last one.

4 Q. So you can recall preview, progressive,
5 power, and then there is another one likely with a
6 "P" that you cannot recall?

7 A. We never used the last one.

8 Q. That's a good segue for my next question
9 is: Did Hearing Help use preview, progressive, and
10 power?

11 A. Yes.

12 Q. Okay. And under what circumstances would
13 it use each?

14 A. Many circumstances. We had -- each one
15 had a specific purpose. So dependent on where we
16 were at in our day, our list, who was on the phone,
17 how many were on the phone. There was tons of
18 factors that we used to determine which speed we
19 would run at.

20 Q. Was there certain types of telephone
21 numbers that Hearing Help would only call on a
22 specific type of mode?

23 MR. ROSENTHAL: Objection.

24 You can answer.

1 THE WITNESS: Yes. Previous or current

2 customers we only did on preview. That was the
3 only limitation we did.

4 BY MR. PARONICH:

5 Q. So I have a little bit of familiarity with
6 these dialing systems so I've been able to try to
7 help us along through these questions, but I've
8 never heard of "change script." Could you explain
9 to me what that is.

10 A. Yes.

11 Q. Thank you.

12 A. So when a phone call was connected, the
13 information that came on the screen was the script.
14 So you could tell what I wanted to be up, their
15 first name, last name, lead source, phone number,
16 what state they're in, if there was any other
17 factors that were built in the list, you could
18 choose to put them up on the screen.

19 Q. Okay. Understood. And you had also
20 I think said one of the options was "create
21 script"; is that right?

22 A. Yeah.

23 Q. And did you ever create scripts
24 personally?

1 A. So that would have been on a preview
2 dialer. A preview dialer allows you to, before a
3 call is made, the rep would see the name and the
4 number, and they would have to hit the button that
5 said "dial" or they had the option to hit "skip."

6 MR. PARONICH: Okay. I'm going to move on to
7 another exhibit. My computer says it was just
8 uploaded.

9 THE WITNESS: Okay.

10 (Deposition Exhibit 29 remotely
11 introduced and provided electronically
12 to the reporter.)

13 BY MR. PARONICH:

14 Q. In this document that was produced, you
15 see there's a statement from you where you say:
16 What are you talking about on the Your Chat about
17 compliance? Do you see that?

18 A. Yeah.

19 Q. What is the reference to compliance in
20 this context?

21 A. Not knowing who the other person is,
22 I don't know for sure.

23 Q. Who are the individuals you talked to
24 about compliance at Hearing Help?